

# Employee Terminations

Faced with mounting economic uncertainty, some employers may have to consider terminating the contracts of their employees. One way to do this is to embark on a retrenchment exercise. However, besides the fact that retrenchments are discouraged by [Tripartite Guidelines on Managing Excess Manpower](#), the payment of retrenchment benefits (for instance, if provided for in the contract or collective agreement), may pose a further financial burden on the employer.

In light of this, the question might arise as to whether the employer can terminate the contract on some other ground. In particular, can employers seek to terminate the contracts of foreign employees who are stranded overseas and are unable to return to Singapore? In law, there is a principle known as ‘frustration’ which means that if something happens after the making of the contract which makes further performance impossible or radically different from what was originally envisaged by the parties, the parties may be excused from continuing with the contract without having to pay any compensation.

Whether there would be frustration in such circumstances would depend on many factors.

- For instance, if the work can be done remotely, as is likely to be the case with higher level employees, it is unlikely for the contract to be frustrated.
- If the work cannot be done remotely, which is typical of service-related jobs or jobs which demand manual labour, proving frustration may also depend on how long the restriction or inability to enter Singapore lasts. The longer the restriction, the more likely that frustration would set in. However, if it lasts merely a couple of weeks and the employment contract is for a year or two or is open-ended, it is less likely that the contract would be frustrated.

- Further, in the case of Malaysian workers, the fact they could have been accommodated in Singapore, albeit at a cost to the employer, may also suggest that the impossibility was brought about by the actions of the employer and therefore should not be excused.

Aside from all these complications, the link between the concept of ‘frustration’ and the Employment Act has never been tested in the courts. The Employment Act requires contracts to be terminated by notice or salary in lieu of notice (unless there is misconduct or a wilful breach) and it is not clear whether this requirement still operates where the contract is frustrated. The answer is probably that these requirements can be dispensed with if the contract is indeed frustrated, but this again begs the point that this has not been tested in the courts.

In addition, in the case of employees falling under the Employment Act (which covers most employees other than select groups like government and statutory board employees), any termination can be challenged on the ground that there is no just cause or reason, within 1 month of the termination by lodging a claim with the Employment Claims Tribunal. The process to do so is inexpensive which increases the chances of such actions being mounted.

A similar kind of issue can arise in relation to employees on probation who are placed on leave of absence or who are served quarantine or stay home notices, assuming the employee cannot continue to do the work at home. The stated absences are for periods of two weeks and probation periods are typically for three months or longer. Therefore, this may not amount to a significant disruption that will result in frustration. It may also be possible for the parties to vary the

contract by mutually agreeing to extend the period of probation, which would be beneficial to both as the employer would have more time to make an assessment and the employee would have more time to prove themselves. For employees covered by the Employment Act, termination during probation too is open to challenge if there is no just cause or reason as stated above.

With the nationwide circuit breaker measures put into place until 4 May 2020, the same sort of issues will have to be considered. However, the longer this lasts, the stronger the case for 'frustration'.

Whatever the case, there are inherent risks and uncertainties in hastily carrying out terminations in the present circumstances and employers would be wise to tread carefully.

*In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice.*

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*Also by this author -*

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